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AF/3611

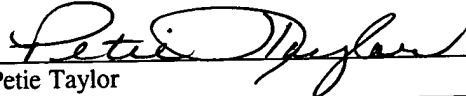
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Atty. Docket No. GOR05/P300A

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June 24, 2005
Date


Petie Taylor

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Art Unit : 3611
Examiner : Brian K. Green
Applicant : Gigi C. Gordon
Appln. No. : 09/805,313
Filing Date : March 13, 2001
Confirmation No. : 1788
For : CLEANING ARTICLES

Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANT'S REQUEST FOR REHEARING UNDER 37 CFR §1.197(B)

In response to the Board's Decision on Appeal mailed April 24, 2005, Appellant hereby requests a Rehearing to consider the following points believed to have been misunderstood or overlooked in rendering the Decision.

The pending claims state that the cleaning article is "for cleaning a surface selected from the group consisting essentially of dishes, glassware, cooking pots and pans, kitchen counters, kitchen sinks, dining tables, and other surfaces that are used during the food preparation process, toilets, tubs, sinks, floors, walls, cars, boats, windows and tables." The Board stated that recitation of an intended use does not distinguish the claimed structure from prior art structure of *Carter et al.* Decision on Appeal, p. 5. Therefore, the functional language in each claim, "for cleaning a surface selected from the group consisting essentially of dishes,

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glassware, cooking pots and pans, kitchen counters, kitchen sinks, dining tables, and other surfaces used during the food preparation process, toilets, tubs, sinks, floors, walls, cars, boats, windows and tables” was not afforded patentable weight. Applicant respectfully contends the Board saw too much in *Carter et al.* *Carter et al.* fails to teach, or suggest, the claimed use of bath towels for the claimed cleaning applications. Only humans are to be cleaned by the towels of *Carter et al.*

The Board said, “it cannot be gainsaid that many towels that are originally meant for personal use are ultimately used for cleaning walls, cars and the like.” Decision on Appeal, p. 5. This is true, but irrelevant. Such towels, perhaps bearing the indicia “HIS” or “HERS,” will completely fail to meet a key element of the claims. Claim 1 is illustrative and states, “the identifying indicia distinguishing each of the cleaning articles for different intended applications, one from the other, and specifying cleaning application of each of the plurality of cleaning articles.” A towel bearing the “HIS” indicia that is later used to wash a wall or a car plainly does not bear indicia specifying “WALL” or “CAR.” It does not specify the cleaning application in any way, as required by the claims. Nothing in *Carter et al.* suggests this feature of the claim or motivates one to this feature of the claim.

Furthermore, such functional language in an apparatus claim requires that *Carter et al.* possess the capability of performing the recited function. *R.A.C.C. Industries Inc. v. Stun-Tech Inc.*, 49 USPQ2d 1793 (Fed Cir. 1998). *Carter et al.* does not disclose or teach any article that is capable of cleaning a surface selected from the group consisting essentially of dishes, glassware, cooking pots and pans, kitchen counters, kitchen sinks, dining tables, and other surfaces that are used during the food preparation process, toilets, tubs, sinks, floors, walls, cars, boats, windows and tables. The use of a bath towel for such purposes will ruin the bath towel and convert it to a rag, which is not the purpose of the towel in *Carter et al.*

Although we all know old towels often end up in the rag bin, *Carter et al.* does not disclose rags. It teaches designer bath towels for use on humans - “HIS.” If the towels of *Carter et al.* were used as claimed, they would cease to be designer bath towels for use by humans. Moreover, the functionality of the intended cleaning application is not in isolation,

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but is integrally tied to the claim language, which requires unique indicia corresponding to the cleaning application to distinguish one cleaning article from another. Consequently, the Board erroneously concluded that *Carter et al.* renders obvious the pending claims.

The Board also stated its confidence that one of ordinary skill in the art would conclude *Carter et al.* as teaching multiple towels, and in fact, the Board took judicial notice of the fact that many such sets of “HIS” and “HERS” towels have existed in many bathrooms. Decision on Appeal, p. 5. Applicant respectfully submits this is precisely the reason *Carter et al.* fails to reach the claimed invention. The claims have been expressly amended to include: “the group consisting essentially of . . .” and expressly limited the invention to non-human applications. Thus, even if *Carter et al.* does suggest a plurality of cleaning articles, it suggests none of the claimed cleaning applications. Indeed, take alone for example the problems of cross-contamination and food-borne illnesses that exist in the kitchen, as discussed in the specification. There is nothing in *Carter et al.* that suggests the problem or renders a solution. The present invention, however, does.

In sum, the best that *Carter et al.* teaches is a pair of towels, one marked “HIS” and one marked “HERS,” neither of which expressly specifies, as required by the claims, an intended non-human cleaning application. A rag marked “HIS” plainly does not tell the user nor can it tell the user whether to use the rag to clean the kitchen counter or the toilet. The cleaning article of the present claims would. The towels of *Carter et al.* do not.

The Board also agreed with the Examiner that it would have been obvious to one of ordinary skill in the art to provide the labels of Scotch-Brite™ to packaging of the cleaning articles of the present invention. Decision on Appeal, p. 6. The Board deemed Claim 1 broad enough to embrace a throw away wrapper. *Id.* Applicant respectfully submits that the Board is mistaken. Claim 1 requires “a visually distinguishable external feature for specifically identifying the specific intended cleaning application of each of the plurality of cleaning articles.” Claim 6 plainly requires “a visually discernable identification associated with the cleaning article for distinguishing each of the cleaning articles for different intended cleaning applications, one from another.” The specification teaches only permanent marking or actually

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forming the cleaning article to the indicia specifying use. Indicia that is thrown away before use of the cleaning article is hardly capable of serving to distinguish one cleaning article from another. Such "throw away" indicia also is plainly not "a visually distinguishing external feature" of the cleaning article as called for in Claim 1.

The Board also took note that it is common to label a gas can with "GAS" for identifying the use of the container, namely to contain gas. Decision on Appeal, p. 6. The Board concluded it was well known to apply a label to an article that describes the uses for the article. *Id.* While it is true that gas cans are labeled "GAS," the Board erroneously drew from this fact the farther fact that a plurality of cleaning articles could be each identified with unique indicia to distinguish them one from the other. Each claim states: "each of the cleaning articles including ... identifying indicia constituting a visually distinguishing external feature" (Claims 1 and 18), "each of the plurality of cleaning articles . . . including an identifying indicia constituting a visually distinguishing feature" (Claim 6), or "selecting for each of the plurality of articles a visually discernable indicia" (Claim 14). Indicia on the package, particularly one that is thrown away, as in the Scotch-Brite cookware sponge wrapper, does not meet this claim element. Again, during and after use, how is the user to distinguish the sponge for use on the kitchen counter from the sponge last used in the toilet? Applicant's invention uniquely solves this problem. The Scotch-Brite™ reference does not. Thus, the packaging of the Scotch-Brite cookware sponge does not support the rejection.

Conclusion

It is believed that upon further consideration, the Board will understand that the prior art fails to teach a plurality of cleaning articles, each with a distinctive and identifying indicia for distinguishing one from the other for non-human cleaning applications.

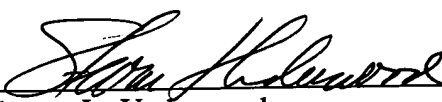
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Respectfully submitted,

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Dated: June 24, 2005



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